was exercising control over him is the decisive fact, for the general rule is that the contributory negligence of a third person cannot be imputed to a plaintiff who is himself without fault. *Mills* v. *Armstrong*, L. R. 13 App. Cas. 1; *Little* v. *Hackett*, 116 U. S. 366.

TRUSTS — PRECATORY WORDS. — A wife devised the residue of her estate to her husband, adding this clause: "It is my wish and desire that he shall furnish a home and maintenance to my father for life should he need it." *Held*, this imposed a binding trust. The wish of a testator, like the request of a sovereign, is equivalent to a command. *Foster* v. *Willson*, 38 Atl. Rep. 1003 (N. H.).

The subject of "precatory trusts" was discussed in 11 HARVARD LAW REVIEW, 261. The decision in the principal case seems to be based upon a test formerly applied in equity, but abandoned in later cases.

TRUSTS — STATUTE OF WILLS — PAROL EVIDENCE. — A will contained an absolute devise to a subscribing witness. The testator intended the gift to be on trust. Of this the devisee had knowledge prior to the making of the will, and made no objection. *Held*, that the testator's intent could not be shown by parol evidence, because of the clause concerning wills in the Iowa Statute of Frauds. The devisee, therefore, took an absolute interest, and the devise to him was void. *Moran* v. *Moran*, 73 N. W. Rep. 617 (Iowa).

The correctness of the decision depends upon whether there was a trust enforceable against the subscribing witness. If there was, he did not have a disqualifying interest. This is a question arising under the provision in the Statute of Frauds concerning trusts in lands, and not that in regard to wills. The devisee, having knowledge of the testator's ante-testamentary proposal to make him a trustee, agrees by his assent, express or to be implied from his silence, to carry out the trust upon receipt of the *res*. The *res* is conveyed by will, duly executed according to statute. The question that then arises is not upon the validity of the will, but upon the enforcement of the parol ante-testamentary agreement. Such a parol agreement cannot be enforced when land is conveyed by deed. But by the great weight of authority, it is enforceable when the conveyance is by will, although on theory no distinction should be made. *Mucklestone* v. *Brown*, 6 Ves. 52; *Barrell* v. *Hanrick*, 42 Ala. 60; *O'Reilly's Appeal*, 154 Pa. 485.

The formalities required by § 1934 of the Iowa Code of 1873, for the creation of trusts in land, were not complied with in the principal case. If this section applies to wills, the result might be supported on that ground. But this point the court expressly refuses to decide.

WILLS — CONSTRUCTION — ELECTION. — The testator made a will, giving land subject to a legacy and a charge to A, whom he named as executor. Subsequently the testator gave A a deed in fee of the land. On the testator's death, A qualified as executor. *Held*, that A, having undertaken the execution of the will, had elected to take under the will, and so held the land subject to the charge. *Allen* v. *Allen*, 28 S. E. Rep. 513 (N. C.).

Where a man by deed or will gives property to A, and by the same instrument assumes to give some of A's own property to B, it is a rule of equity that A must either renounce the instrument entirely, or if he takes under it, must allow his property to go to B, unless it appears from the instrument that A was to have his gift at all events. This is the doctrine of election, and is based on the presumed intention to impose a condition which is binding on A's conscience. 2 Story Eq. Jur., 13th ed., §§ 1075–1099. The principal case misapplies this doctrine. The devise subject to the charge was revoked by the conveyance during the testator's life. The case, therefore, makes a will for the testator in direct opposition to his duly expressed wishes.

REVIEWS.

HANDBOOK OF THE LAW OF EVIDENCE. By John J. McKelvey. St. Paul, Minn.: West Publishing Co. 1898. pp. xii, 468.

This latest volume of the *Hornbook Series* deals with one of the important divisions of the law with certainly all the compactness that is permissible. Mr. McKelvey has endeavored to strike a mean between "the meagreness of Stephen's Digest, on the one hand, and the unwieldy

fulness of detail characteristic of some of the larger works, on the other." He has met with a commendable degree of success. The whole range of topics of the law of evidence and of those generally considered with it is covered, and the treatment, while in no case exhaustive, is almost uniformly clear in its brevity. It is doubtful if such a book would be a satisfactory medium through which to introduce the novice into the mysteries and complexities of the law of evidence; such a one might well feel that he had here and there missed a step, and that he was hurried from one topic to another before he had probed to the very bottom of the first. Indeed, for the fundamentals, for the purely historical basis of many of the exceptions to the hearsay rule for instance, the student must go to another book. To one who has some acquaintance with the rules of evidence, however, this book adequately performs the service of refreshing the recollection, and is what it purports to be, — a handbook in which leading principles are correctly and succinctly stated. The "summings-up," if the expression may be permitted, are excellent. Lawyers and judges who require a ready knowledge of the subject will find Mr. McKelvey's book a source of strength and comfort.

The book is deserving of praise in that very little of positive error is found between its covers. There is almost none of that confusion, so generally to be met with in treatises on evidence, of giving a term a certain meaning on one page, another meaning on perhaps the next page, and still a third in another part of the book, which results apparently from an inability to treat questions of evidence with anything like definiteness. In the first place, the author has shut out a large field for possible misunderstanding by noticing that it is only after the positive rules of law and of pure logic have had full play that the rules of evidence properly exert their influence. Then, too, the line of demarcation between what are and what are not questions in the law of evidence has seldom been so accurately and firmly drawn as here. Finally, to speak of specific matters, it is satisfactory to find the nature of the burden of proof and of a presumption explained with the precision that they demand, and to which they are entitled. In giving things their right names, the author has certainly performed a service.

In his preface, Mr. McKelvey acknowledges the assistance he has derived from Professor Thayer's collection of Cases on Evidence, and he makes numerous citations from the learned author's notes in that work, and from his articles in the HARVARD LAW REVIEW. No disparagement is intended to Mr. McKelvey in saying that a great part of what is valuable in his book is clearly due directly to the teaching of Professor Thayer. The fact is apparent, and the author in no way seeks to conceal it. Better is it, however, that Mr. McKelvey should be lacking in originality than that his book should be less sure in tone and less logical in its arrangement. R. L. R.

LAW-LATIN. — A Treatise in Latin, with Legal Maxims and Phrases as a Basis of Instruction. By E. Hilton Jackson. Washington, D. C.: John Byrne & Co. 1897. pp. xiv, 219.

Whether this ingenious little book fulfills, in the usual phrase, a long-felt want, would be hard to say. A knowledge of Latin is convenient, but perhaps hardly indispensable to the modern American lawyer. There may very probably exist, however, a considerable number of law students with no knowledge of Latin, who would like to acquire a little, merely to